

# Exhibit A

Charles Sweeney

11/21/2006

UNITED STATES DISTRICT  
DISTRICT OF MASSACHUSETTS

Civ. Action No. 04-10294 DPW

DEBORAH CHIN, individually and on  
behalf of all others similarly  
situated,

Plaintiff,

vs.

SONUS NETWORKS, INC., HASSAN  
AHMED, PH.D. AND STEPHEN NILL,

Defendants.

**CERTIFIED ORIGINAL  
LEGALINK BOSTON**

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DEPOSITION OF CHARLES SWEENEY

November 21, 2006

Wyndham Hotel

8100 International Drive

Orlando, Florida 32819

9:27 a.m. - 12:29 p.m.

Reported by:

Lori Junker, RPR

Notary Public, State of Florida

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1           Q       Prior to your current situation as being  
2 self-employed, where did you work?

3           A       I was control and chief compliance officer  
4 BPI Global Asset Management from April 1997 through  
5 October of last year.

6           Q       Did you hold both of those positions at  
7 BPI Global throughout your tenure there?

8           A       I would say -- I held the  
9 responsibilities. The chief compliance officer  
10 designation came about as a result of changes and  
11 regulations. The SEC mandated that advisors must  
12 have a CCO, and I was the person who was designated  
13 as such.

14          Q       Do you recall when you were designated as  
15 CCO?

16          A       Not specifically, no.

17          Q       Would that have been in 2002?

18          A       It had to do with -- there's a specific  
19 regulation that the SEC put out related to investment  
20 advisors and investment companies, nothing to do with  
21 Sarbanes-Oxley.

22          Q       If we break these down for a moment, what  
23 were your duties and responsibilities as controller  
24 of BPI Global?

25          A       Anything from a financial accounting point

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1           **Q       You said "client's mandate."    Would you**  
2 **explain what a client mandate is?**

3           **A       Investment objectives for a client**  
4 **account.**

5           **Q       Who were, as a general matter, BPI**  
6 **Global's clients?**

7                   MR. CERA: Object to the form.

8 BY MR. PRENDERGAST:

9           **Q       Types. Do you understand the question?**

10          **A       Client types?**

11          **Q       Yes.**

12          **A       There was a group of Canadian mutual funds**  
13 **that BPI Global Asset Management served as investment**  
14 **advisor from April 1, 1997, through some point in**  
15 **2005. There were US Mutual Funds, there were**  
16 **separate accounts; there were hedge funds, some of**  
17 **which were Canadian hedge funds under the mutual fund**  
18 **umbrella, others of which were domestic hedge funds.**

19                   Hedge funds is a broad term, you know, but  
20 private funds as the SEC knows it.

21          **Q       Just so I understand the structure, when**  
22 **you say that they were BPI Global's clients, did BPI**  
23 **Global have a direct relationship with them?**

24                   MR. CERA: Object to the form.

25                   THE WITNESS: I'm not sure what a direct

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1           Q       The amended complaint in this matter  
2       states as a class period March 28, 2002, through  
3       March 26, 2004. Do you know what the class period  
4       means?

5           A       That's what I understand the class period  
6       to be.

7           Q       Does this spreadsheet, which is attached  
8       to Sweeney Exhibit No. 2, cover all Sonus purchases  
9       and sales by these entities between the period March  
10      28, 2002, and March 26, 2004?

11          A       It would be my belief, but with his  
12      question, I too have a question.

13               MR. CERA: He's confused you.

14               THE WITNESS: Without looking at the  
15      underlying detail --

16      BY MR. PRENDERGAST:

17          Q       Let me ask you this: What does the begin  
18      date on the fifth page of Sweeney Exhibit No. 2  
19      signify?

20          A       That, I would say, would be the beginning  
21      of the period that's covered in this report.

22          Q       Did you prepare this report?

23          A       I may have had someone else do the  
24      underlying creation of the file and manipulated it  
25      into this form.

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1 Q Do you recall who you may have directed to  
2 do this?

3 A If I were to take a guess, it would  
4 probably have been the operations manager.

5 Q Do you recall providing the operations  
6 manager with any directions regarding the dates to be  
7 covered?

8 A I don't have any specific recollection.

9 Q Let me ask you this question: Prior to  
10 May of '03, are you aware of any transactions in  
11 Sonus securities by these entities?

12 A Not specifically, no.

13 Q Generally?

14 A I couldn't even venture a guess.

15 Q I just thought because you said not  
16 specifically, I don't know if you had any general --

17 A I don't have any recollection of any  
18 transactions over any period of time specifically  
19 except for what I see here.

20 Q That's fine. Let's return to where I was  
21 before in the questions of the legal relationship  
22 between the entities identified on page 5 of Exhibit  
23 2 or beginning of page 5, Exhibit 2 and BPI Global.

24 MR. CERA: I'm sorry. Just to be precise,  
25 BPI Global Asset Management LLP; that's what

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1           A       1977. From 1991 to '94 I was with Coopers  
2 Lybrand and before that Laventhol & Horwath.

3           Q       While you were employed by BPI Global were  
4 you employed by any of the other BPI entities  
5 simultaneously?

6           A       No, sir.

7           Q       Were you ever employed by CI Mutual Funds?

8           A       No, sir.

9           Q       Were you ever employed by Trilogy Global  
10 Advisors?

11          A       Let me step back -- I'm frankly not sure.  
12 BPI Global and Trilogy Advisors merged in May of '05.

13          Q       Right.

14          A       Trilogy Global Advisors was the owner of  
15 both entities after the transaction and -- I'm not  
16 sure who paid me specifically, although I consider  
17 myself employed by, I guess, both of them because I  
18 was CCO of Trilogy and also BPI during those two  
19 final months.

20          Q       Why did you leave BPI Global?

21          A       I was terminated.

22          Q       Do you know the reasons for your  
23 termination?

24          A       The compliance function and financial  
25 functions were moved to New York.

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1 Q Were you given an opportunity to go to New  
2 York?

3 A No.

4 Q Besides Mr. Burrow did you report to  
5 anybody else at BPI Global?

6 A I would say there was a dotted line to the  
7 board of managers in my role as CCO.

8 Q You understand that BPI Global is a  
9 plaintiff in this lawsuit?

10 A I do.

11 Q Would you give me your understanding of  
12 what this lawsuit is about, sir.

13 A BPI was an investor in Sonus Networks for  
14 a period of time.

15 Q I'm sorry. I don't mean to interrupt you,  
16 but because we're trying to get some precision here  
17 and because there are a lot of BPIs, there are Funds  
18 and Global and Capital, I want to try, if we can, to  
19 use whatever is the correct designation.

20 A Okay. BPI Global's clients became  
21 investors as a result of our investment decision to  
22 buy Sonus Networks stocks. The period of time over  
23 which we bought those, it's my understanding that  
24 there were some erroneous revenue recorded to the  
25 point of requiring a restatement of the financial



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1 statements. And there were some other matters, as I  
2 understand it, expense accruals and so forth, and  
3 that is -- once all that news was made public, the  
4 value of the stock declined, our clients lost money,  
5 and BPI being a fiduciary is looking to make our  
6 clients whole.

7 Q You mentioned you had an understanding  
8 there was erroneous revenue and some other things.

9 A Accruals or something like that.

10 Q Where did you gain your understanding in  
11 that regard?

12 A I was made aware of it by counsel.

13 Q By counsel?

14 A Uh-huh.

15 Q What counsel?

16 A Sol's firm.

17 Q At some point did you have a discussion  
18 with John Bichelmeyer regarding Sonus?

19 A I did.

20 Q Would you tell me what he said to you and  
21 what you said to him regarding the erroneous  
22 revenues.

23 A I don't have the specific recollection of  
24 a conversation, but generally speaking, before we  
25 decided to take this role, I spoke to John and

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1 Q Did you approach your lawyers or did your  
2 lawyers approach you?

3 A We were approached by Mr. Cera's firm.

4 Q Am I correct that BPI Global had used Mr.  
5 Cera's firm previously in a class action?

6 A We had not.

7 Q You had not?

8 A No.

9 Q Had you ever used Mr. Cera's firm prior to  
10 that?

11 A We had not.

12 Q Had anybody at the company at BPI Global  
13 have a pre-existing relationship, to your knowledge,  
14 with Mr. Cera's firm?

15 A Not to my knowledge.

16 Q Do you know how it was that Mr. Cera's  
17 firm came to approach BPI Global with regard to this  
18 lawsuit?

19 A Our firm's clients were the firms that  
20 lost the most money on the stock in that period of  
21 time. In the public domain there's information as to  
22 who holds what and that information was out there  
23 that he had garnered. And because we had lost such  
24 substantial amounts on behalf of our clients, he  
25 approached us as being a prime candidate for this.

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1           Q       Who was the law firm that represented BPI  
2       Global in the other class action, if you remember?

3           A       I do not remember.

4           Q       Did you have any other conversations with  
5       any other law firms regarding a possible suit against  
6       Sonus?

7           A       I want to say I think I did only just to  
8       ask the question, Is this firm real? I called my  
9       lawyer or the firm's lawyer and asked him if he knew  
10      anything about them and --

11          Q       I will stipulate that I think his firm is  
12      real.

13                   MR. CERA: Oh, good.

14                   MR. PRENDERGAST: That's the last  
15      concession you get from me.

16      BY MR. PRENDERGAST:

17          Q       Have you read the complaint in this case?

18          A       I've had the complaint, yes. There was a  
19      draft complaint that I was given and then from that  
20      the first complaint was filed and then the first  
21      amended complaint was filed.

22          Q       Did you provide any of the information  
23      that went into the draft complaint?

24          A       I would say but for this schedule, you  
25      know, there's little information we provided.

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1 Q I'm sorry?

2 A Little information, if any.

3 Q But for the schedule, the losses?

4 A Yes.

5 Q Apart from what you may have learned from  
6 your lawyers, did you make any assessment as to  
7 whether or not the company had intentionally  
8 misrepresented any facts to the public?

9 MR. CERA: Object to the form.

10 THE WITNESS: I would say we relied  
11 principally on our lawyer.

12 BY MR. PRENDERGAST:

13 Q Who at BPI Global -- strike that?

14 Who approved the filing of this lawsuit?

15 A I would have signed the documents as  
16 controller.

17 Q Did you speak with any of the folks to  
18 whom you reported before filing this lawsuit about  
19 commencing this lawsuit?

20 A I spoke, I think, briefly with Ryan  
21 Burrow.

22 Q Is it Brian or Ryan?

23 MR. CERA: Ryan, R-Y-A-N.

24 THE WITNESS: Ryan Burrow, the president,  
25 and just had a short general conversation. And

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1           because we had been through it before and  
2           understand our fiduciary obligation to our  
3           clients, you know, he realized it would be --  
4           the onus would be on me, not him.

5 BY MR. PRENDERGAST:

6           Q       Approval is easy when you don't have to do  
7           anything.

8                   I apologize, I should know this off the  
9           top of my head, what was the name of the other  
10          litigation?

11          A       Turkcell.

12                   MR. CERA: T-U-R-K-C-E-L-L.

13 BY MR. PRENDERGAST:

14          Q       Had BPI Global been involved in any other  
15          class actions besides Turkcell at that point?

16          A       No, sir.

17          Q       Had BPI Global brought any other claims  
18          against a company in which it invested in a legal --  
19          strike that. Bring any other lawsuits against  
20          companies which any of your entities invested in?

21          A       We were not involved in the filing of the  
22          lawsuits; however, to the extent that we received the  
23          flow of forms, you know, we would fill out the forms  
24          and provide the paperwork as necessary.

25          Q       Thank you. Other than the one or two

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1 conversations that you had with Mr. Bichelmeyer and  
2 the conversation that you may have had with Mr.  
3 Burrow, do you recall any other conversations with  
4 anybody besides counsel regarding Sonus prior to  
5 commencement of the lawsuit?

6 A No.

7 Q In engaging Mr. Cera's firm, did you come  
8 to an understanding as to what would happen to a  
9 recovery in this case should there be one?

10 A Well, I don't know if we ever discussed --  
11 it was a long time ago. The recovery, if any, would  
12 all go to the clients.

13 Q Did you make any arrangements with Mr.  
14 Cera's firm to share in that recovery on behalf of  
15 BPI Global?

16 A There would be no reason that we would  
17 share in the recovery. I should probably clarify  
18 when I say "we." I mean BPI even though I'm not  
19 associated with any longer. It's a hard thing to  
20 drop.

21 Q Fair enough. We will go with that  
22 understanding during the course of this deposition.

23 You understand whether -- did you reach  
24 any arrangement with Mr. Cera's firm as to any  
25 payment that might be made to BPI Global for serving

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1 as lead plaintiff in this case?

2 A I'm not sure I understand the question.

3 Q Was there any arrangement with Mr. Cera's  
4 firm that BPI Global would be paid for its  
5 participation in this case in any form?

6 A There was no understanding that BPI would  
7 be paid by anybody through anything.

8 Q Fine, thank you. Once the case commenced,  
9 who at BPI Global had the responsibility for  
10 overseeing the litigation?

11 A It was me.

12 Q Anybody else?

13 A No.

14 Q Did you speak with anybody at BPI Capital  
15 regarding this litigation?

16 A At one point or another, Michael Killeen,  
17 K-I-L-L-E-E-N, general counsel of CI Mutual Funds  
18 became involved and was asked to provide an  
19 affidavit.

20 Q Did you speak with Mr. Killeen?

21 A At some point in time, yes. As to timing,  
22 I can't tell you.

23 Q Do you recall the nature of your  
24 conversation, the subject?

25 A I believe it had to do with the affidavit

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1 and just making arrangements for him to speak with  
2 Mr. Cera's firm.

3 Q Did Mr. Killeen ever have responsibility  
4 for overseeing this litigation?

5 A No.

6 Q Did you speak with anybody else at BPI  
7 Capital regarding this litigation?

8 A Not that I recall.

9 Q After commencement of this litigation did  
10 you speak with anybody at any of the clients  
11 regarding this litigation?

12 MR. CERA: Object to the form.

13 THE WITNESS: No.

14 BY MR. PRENDERGAST:

15 Q Do you understand that question?

16 A There was no communication with any of the  
17 clients regarding this litigation.

18 Q What is your understanding, if any, as to  
19 where BPI Global's authority to commence this lawsuit  
20 comes from?

21 MR. CERA: Object to the form.

22 THE WITNESS: I would say as a fiduciary  
23 pursuant to the terms of our agreements that we  
24 have a place with a variety of clients that we  
25 were in a position or we would have to come to



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1           bat for them. There's no specific authority  
2           that I'm aware of that says, you know, filing  
3           lawsuits against companies that we invest in  
4           that lose money.

5 BY MR. PRENDERGAST:

6           Q       Did you see the amended complaint in this  
7           case --

8           A       I did.

9           Q       -- before it was filed?

10          A       I believe so.

11          Q       Now, in 2005 you left BPI Global, correct?

12          A       Yes.

13          Q       Did you speak with anybody upon your  
14          departure from BPI Global regarding oversight of this  
15          litigation?

16          A       John Myklusch, M-Y-K-L-U-S-C-H.

17          Q       Who is John Myklusch?

18          A       John is the chief financial officer and  
19          now chief compliance officer of Trilogy Global  
20          Advisors which is a successor entity to the  
21          individual entities that merged in May of 2005.

22          Q       Why did you speak to Mr. Myklusch?

23          A       Because he is the chief financial officer  
24          and chief compliance officer of the successive entity  
25          and would be responsible for such matters.

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1 A Yes, I have.

2 Q Just tell us for the record what it is.

3 A It's the investment advisor agreement  
4 between BPI Global Asset Management and BPI Capital  
5 Corporation for the investment management of certain  
6 funds managed by BPI Capital Corporation.

7 Q Did you participate in the drafting of  
8 this document?

9 A I did not.

10 Q When is the first time you saw this  
11 document?

12 A The summer of 1999.

13 Q Now, if we turn to what is marked at the  
14 bottom as page 2, I'm going to direct your attention  
15 to Recital C. Do you see that?

16 A Yes, sir.

17 Q In there it mentions attached as Schedule  
18 1 to this document investment objectives,  
19 restrictions, and practices. Do you see where it  
20 references that?

21 A Yes, I do.

22 Q It also talks about that those investment  
23 objectives, restrictions and practices may be amended  
24 from time to time by the manager. Do you see that?

25 A Which would be BPI Capital Corporation.

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1 Q Was it your understanding that the manager  
2 had sole authority to amend those investment  
3 objectives, restrictions and practices?

4 MR. CERA: Object to the form. Go ahead.

5 THE WITNESS: As best as I know, yes.

6 BY MR. PRENDERGAST:

7 Q If we turn to page 6, sir, duties of the  
8 investment advisor, do you see that?

9 A I do.

10 Q It mentions that the investment advisor  
11 shall provide the -- capital A -- Advice. Do you see  
12 that reference?

13 A Yes.

14 Q First of all, the investment advisor, is  
15 that BPI Global?

16 A Yes.

17 Q And "Advice," I believe, is a defined  
18 term. If you would turn to page 3.

19 A Yes.

20 Q Do you have an understanding of what is  
21 entailed in "Advice" as that term is used in this  
22 document?

23 A Well, it makes reference to item 5 in this  
24 agreement, which is on page 5.

25 Q Uh-huh.

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1           A       And it does not appear to be really  
2 defined there as well.

3           Q       That's why I asked the question. Do you  
4 have an understanding in terms of -- strike it out.

5                   Do you have an understanding of the  
6 meaning of "Advice" as it is used in this agreement  
7 in practice?

8           A       My understanding of the word "Advice" as  
9 it is used in this agreement is that it involves  
10 investing with full discretion the asset -- the money  
11 that's invested in the various funds by the investors  
12 of the individual funds and making a determination of  
13 when to buy those funds, when to sell those funds,  
14 from whom to -- you know, who to use as an executing  
15 broker on either end of those transactions and to  
16 vote proxies as need be.

17           Q       Can you identify for me, sir -- strike it  
18 out. What do you mean by full discretion?

19           A       It means -- as I say, we as investment  
20 advisor -- BPI Global as an investment advisor makes  
21 the decision what to buy, when to buy it, how much to  
22 pay for it, who to buy it through, how to vote the  
23 proxies and any other matters that pertain to the  
24 security.

25           Q       Within this agreement, sir, can you

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1 identify for me what provision provides BPI Global  
2 with full discretion as you have just described it?

3 MR. CERA: I'll object to the form.

4 Document speaks for itself. Take the time to go  
5 through it.

6 THE WITNESS: Initially on page 2 it  
7 speaks of the fact that the investment advisor,  
8 which is BPI Global, provides investment  
9 management services to certain types of equity  
10 stocks.

11 BY MR. PRENDERGAST:

12 Q You're referring to which paragraph?

13 A Paragraph D initially.

14 Q Okay. Is it easier to go through and tell  
15 me all this first, or would you like --

16 A Then the next section would lead one to  
17 believe BPI Global is a fiduciary in paragraph 5D on  
18 page 5, but then the bulk of what our  
19 responsibilities as investment advisors as listed on  
20 page 6 under item 6 and -- again it uses that word  
21 that's poorly defined earlier and that being, Advice  
22 in respect of each of the funds during the term of  
23 this agreement in accordance with the investment  
24 policy of each of the funds," and then it goes on to  
25 say, And without limiting the generality of the

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1 foregoing, shall, on the instructions or approval of  
2 the manager with respect to each of those funds  
3 invest and reinvest the investment assets; implement  
4 portfolio purchases and sales; provide or cause to be  
5 provided to the manager such reports as they consider  
6 necessary; to participate to the extent reasonably  
7 required in marketing and other promotional efforts  
8 to determine a cause to be determined in what manner  
9 to vote or execute proxies; to determine whether to  
10 exercise any rights to acquire, convert or exchange  
11 into other securities the securities and investment  
12 assets and other information that they may reasonably  
13 require.

14 So that delineates our responsibilities  
15 under the terms of this agreement without necessarily  
16 saying that we have full discretion, this is what we  
17 are instructed to do.

18 As an aside, I know that there is an  
19 affidavit by Mr. Killeen acknowledging the full  
20 discretion that BPI Global exercised during the  
21 course of our providing this advice and gives his  
22 understanding representing that it's his  
23 understanding that we have full discretion.

24 Q Am I correct, sir, that the duty for the  
25 investment advisor is subject to the instructions and

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1 approval of the manager as set forth in the prefatory  
2 paragraph, paragraph 6?

3 A Again, I'm not a lawyer, but I would  
4 interpret that as giving BPI Capital the ability to  
5 step in, as the case might be. But to the best of my  
6 knowledge, during the entire history of this account,  
7 they have not come and said you should invest in this  
8 stock or you shouldn't invest in a particular name.

9 Q You understand, and correct me if I'm  
10 wrong, however, that they did have that right?

11 MR. CERA: Object to the form. Go ahead.

12 THE WITNESS: As a two-thirds owner of BPI  
13 Global, BPI Capital certainly could control  
14 whatever BPI Global did, and they could somehow  
15 instruct on any variety of topics.

16 BY MR. PRENDERGAST:

17 Q Per this agreement did the manager have  
18 the right to provide instructions or approval to BPI  
19 Global as to how BPI Global executed securities  
20 transactions?

21 MR. CERA: I'll object to the form. Vague  
22 and ambiguous.

23 BY MR. PRENDERGAST:

24 Q Do you understand that question?

25 A I would say that they have a right,

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1 A Yes, I do.

2 Q There's a reference to that language. Am  
3 I correct that the manager could amend the investment  
4 objectives and/or the investment restrictions and  
5 practices without the approval of the advisor?

6 A Yes.

7 Q Now, in the sentence thereafter it says,  
8 "The investment advisor agrees to make investment  
9 recommendations and decisions thereafter."

10 Is there a difference between investment  
11 recommendations and decisions?

12 A In my mind, I would say that they're the  
13 same.

14 Q Do you know why two different phrases are  
15 used for the same thought in this agreement?

16 A I do not.

17 MR. CERA: Object to the form.

18 THE WITNESS: I do not.

19 BY MR. PRENDERGAST:

20 Q Paragraph 8, with reference to the first  
21 sentence of that paragraph, I think it's actually one  
22 sentence, am I correct that the manager had the right  
23 to direct the investment advisor regarding the  
24 disposal of any investment asset?

25 A Could you ask the question again, please.



1 MR. PRENDERGAST: Would you repeat it,  
2 please. Read it back.

3 (The preceding question was read back by  
4 the court reporter.)

5 THE WITNESS: I would say that the term  
6 "investment assets" as it's referred to in here  
7 is more of a collective group of assets which  
8 includes all securities and cash and everything  
9 else and that this paragraph would not  
10 necessarily give them the ability to say you  
11 should get rid of Security A, whatever that  
12 might be, but rather in response to, as it  
13 indicates here servicing redemption or  
14 satisfying other liabilities of the fund, they  
15 may direct us to raise cash in whatever manner  
16 that we would deem appropriate.

17 BY MR. PRENDERGAST:

18 Q Given that answer would you tell me what's  
19 your understanding of the phrase, quote, or  
20 otherwise, end quote, as used in this paragraph?

21 MR. CERA: Object to the form. He  
22 testified he wasn't involved in preparing the  
23 document. You can answer as best you can.

24 THE WITNESS: I don't have a specific  
25 explanation as to what that could encompass.

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1 BY MR. PRENDERGAST:

2 Q In executing your duties as compliance  
3 officer, did you make reference to this agreement in  
4 the investment objectives attached hereto?

5 A From time to time.

6 Q Would you agree with me that the phrase  
7 "or otherwise" suggests that the purposes for which  
8 the manager may direct the disposal of investment  
9 assets is broader than servicing redemptions and  
10 satisfying liabilities?

11 MR. CERA: Object to the form. Calls for  
12 speculation.

13 THE WITNESS: I would say that here and  
14 other cases there are certain broad ambiguities  
15 which entitles BPI Capital to exercise influence  
16 to the degree they would deem warranted but in  
17 practice never did so.

18 BY MR. PRENDERGAST:

19 Q The paragraph also states that the  
20 investment advisor agrees to comply with the  
21 directions of the manager relating to any other  
22 matters concerning the investment assets. Do you see  
23 that language?

24 MR. CERA: Then there's a proviso.

25 MR. PRENDERGAST: I understand. I'm just

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1 directing him to the language at the moment.

2 THE WITNESS: Yes, I see that language.

3 BY MR. PRENDERGAST:

4 Q To your knowledge -- strike it out.

5 Is there any limit on the, quote, other  
6 matters, end quote --

7 MR. CERA: Object to the form. The  
8 document speaks for itself.

9 MR. PRENDERGAST: If I could finish the  
10 question, I'm happy to take your objection.

11 MR. CERA: I'm sorry.

12 BY MR. PRENDERGAST:

13 Q Are there any limits on the other matters,  
14 end quote, concerning investment assets on which the  
15 manager may provide direction pursuant to this  
16 paragraph?

17 MR. CERA: Same objection.

18 THE WITNESS: None that I can see  
19 specified in the agreement.

20 BY MR. PRENDERGAST:

21 Q Do you know of any provision in this  
22 agreement permitting the investment advisor to act  
23 differently than the directions a manager may provide  
24 pursuant to paragraph 8?

25 MR. CERA: Object to the form. Vague and

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1           ambiguous. Lacks foundation.

2       BY MR. PRENDERGAST:

3           Q       Do you understand the question?

4           A       I don't understand the question.

5           Q       If the manager provides directions  
6       pursuant to paragraph 8, can the investment advisor  
7       pursuant to this agreement choose not to follow those  
8       directions?

9           MR. CERA: Object to form.

10          THE WITNESS: I don't know the answer to  
11       that question. It's never occurred, to the best  
12       of my knowledge.

13       BY MR. PRENDERGAST:

14          Q       If you turn to page 17 of this agreement,  
15       which is the Schedule 1 to the agreement, Investment  
16       Objectives, Practices and Restrictions. Do you see  
17       that?

18          A       Yes, I do.

19          Q       You understand that under the heading  
20       Investment Restrictions of Securities Regulatory  
21       Authorities there are certain restrictions as to what  
22       BPI Global could do?

23          A       Yes. It's more an indication of what they  
24       cannot do as opposed to what they can do.

25          Q       Correct, correct, correct. Among other

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1 things -- strike it out.

2 So I am correct that BPI Global did not  
3 have the discretion to choose to do any of the items  
4 enumerated under paragraph 1, subparagraphs A  
5 through --

6 A Pursuant to the terms of the agreement --

7 Q -- J?

8 A Pursuant to the terms of the agreement,  
9 BPI Global as investment advisor is bound to manage  
10 the portfolios in accordance with the investment  
11 objectives, restrictions and practices set out in  
12 that Schedule 1 of the agreement and as that may be  
13 amended from time to time by prospectuses.

14 Q To your knowledge, did any of the funds  
15 listed on the schedule which is attached to Exhibit  
16 2 -- I don't think that's the document in front of  
17 you, sir. It's the affidavit, declaration of Mr.  
18 Barton. Why don't you just get that in front of you  
19 there. Thank you, Mr. Cera.

20 Sir, to your knowledge -- are you  
21 referring to the schedule which begins at page 5 of  
22 Exhibit 2? And there are three pages there which I  
23 understand identify the investment transactions in  
24 the class period of the clients of BPI Global.

25 A Yes.

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1 transaction involving Sonus securities?

2 A I'm not aware of any, you know, short  
3 sales, puts, calls or anything else. There may have  
4 been, but I'm not aware of any.

5 Q In providing instruction to whomever it  
6 may have been to prepare this schedule, did you ask  
7 this person to include transactions that would have  
8 involved shorting or hedging?

9 A I don't recall specifically. My sense is  
10 that this schedule was drafted pursuant to a request  
11 from counsel and that the terms of that request would  
12 have been provided to my operations manager to create  
13 a report pursuant to those requests.

14 Q You mentioned a --

15 MR. PRENDERGAST: I'll have that marked as  
16 No. 4, I think it is.

17 (Whereupon, Defendant's Exhibit No. 4  
18 was marked for identification.)

19 BY MR. PRENDERGAST:

20 Q Mr. Sweeney, we have just marked as  
21 Exhibit No. 4 in this deposition a declaration of the  
22 gentleman to your right, Mr. Solomon B. Cera. It's a  
23 declaration that's been filed in this case. And let  
24 me ask you first, sir, if you've ever seen this?

25 A I don't specifically recall the

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1       **rely for the authority to commence this lawsuit?**

2               MR. CERA: Object to the form.

3               THE WITNESS: I don't have an answer for  
4       that question. As best as -- I did not refer to  
5       the agreement at the commencement of the  
6       lawsuit.

7       BY MR. PRENDERGAST:

8               **Q       As we sit here today are you aware of any**  
9       **other provision in this document which provides BPI**  
10      **Global with the authority to commence this lawsuit?**

11              A       I'm not aware of any provisions that would  
12      indicate that the investment advisor, BPI Global,  
13      would be responsible for filing lawsuits on behalf of  
14      its clients.

15              MR. PRENDERGAST: Can we take a few  
16      minutes?

17              MR. CERA: Yes.

18              MR. PRENDERGAST: Thank you.

19                      (A brief recess was taken.)

20      BY MR. PRENDERGAST:

21              **Q       In retaining Mr. Cera's firm, did you have**  
22      **discussions regarding the amount of fees that Mr.**  
23      **Cera's firm would request as counsel in this case**  
24      **should be there be a recovery?**

25              A       It's a contingent fee arrangement. BPI

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1 wouldn't have to pay any piece if they were handed  
2 out an award.

3 Q Did you discuss the percentage of the  
4 recovery that Mr. Cera's firm would request from the  
5 court?

6 A I don't recall any discussions.

7 Q So your only discussion was -- with regard  
8 to fees was that BPI Global would not have to pay  
9 any?

10 A That it would be borne out of the  
11 recovery, and if there were no recovery, there would  
12 be no fees, a contingent basis.

13 Q I just want to try to get down what the  
14 current structure is with Trilogy and everybody.

15 A That would -- the current structure --

16 Q Hold on. I will, in all fairness, ask a  
17 question.

18 A Okay.

19 Q There was a transaction in 2005 with  
20 Trilogy; is that correct?

21 A That is correct.

22 Q Who were the relevant Trilogy entities  
23 involved in that transaction --

24 MR. CERA: Object to the form of all these  
25 questions. They lack foundation.



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1 BY MR. PRENDERGAST:

2 Q -- if you know?

3 A I mean, the two parties to that agreement,  
4 as best as I know, were Trilogy Advisors, LLC and BPI  
5 Global Asset Management, LLP and then immediately  
6 thereafter LLC or contemporaneously therewith.

7 Q How, if at all, again, if you know, was  
8 BPI Capital involved in this transaction?

9 MR. CERA: I just -- a running objection.  
10 I object. Lacks foundation. Calls for a legal  
11 opinion and conclusion. He's asking for your  
12 knowledge, what you know about this merger  
13 transaction.

14 THE WITNESS: I'm trying to pull that  
15 together. I don't specifically recall the  
16 details. I know that in January certain  
17 portfolios were transitioned from BPI Global to  
18 Trilogy and that certain portfolios in the  
19 Opportunities group or all those were  
20 transferred to an advisor outside of BPI  
21 Trilogy, but I don't recall the specifics of  
22 their involvement in the transaction per se. I  
23 can't tell you when they stepped aside and --

24 BY MR. PRENDERGAST:

25 Q Fair enough. When you say that certain of

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1 think you got your answer.

2 MR. PRENDERGAST: I don't think so.

3 MR. CERA: He said he hadn't. He never  
4 had reason to.

5 MR. PRENDERGAST: He said he had no reason  
6 to; still he may have done it.

7 THE WITNESS: No, I did not read any.  
8 There may have been summaries in prospectuses  
9 that I may have perused but not specific  
10 agreements.

11 BY MR. PRENDERGAST:

12 Q Did you speak to any of the trustees of  
13 any of the funds regarding commencement of this  
14 lawsuit or maintenance of this lawsuit?

15 A No, I did not.

16 Q You understand by funds I mean those  
17 listed on the schedule that is attached to Exhibit 2?

18 A The BPI funds that previously we  
19 designated.

20 Q Right. Did you speak to anybody on behalf  
21 of the funds regarding this lawsuit?

22 MR. CERA: I'm sorry. Read that back.

23 (The preceding question was read back by  
24 the court reporter.)

25 MR. CERA: Vague and ambiguous. You can

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1 answer.

2 MR. PRENDERGAST: Strike that out.

3 BY MR. PRENDERGAST:

4 Q Did you speak to anybody employed by the  
5 funds regarding this lawsuit?

6 A The only party that I'm aware of that is  
7 employed by the fund would be CI Mutual Funds and BPI  
8 Capital Management and very limited conversations as  
9 we spoke previously with Mike Killeen.

10 Q I take it -- I know I'm going to butcher  
11 this name, but John Myklusch, for how long did you  
12 speak to him about this lawsuit?

13 A I don't recall.

14 Q More than an hour?

15 A It was just part of the transition between  
16 he and I of my responsibilities over the matters that  
17 I was responsible for as I left BPI.

18 Q And as you sit here today, are you able to  
19 estimate or recall the amount of time that you spent  
20 in that transition conversation speaking specifically  
21 about this lawsuit?

22 A No, I cannot.

23 Q Following your conversation concerning the  
24 transition did you have occasion to speak to Mr.  
25 Myklusch again regarding this lawsuit?